



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Northwest Region
7600 Sand Point Way N.E., Bldg. 1
Seattle, WA 98115

Refer to:
2003/00806

June 26, 2003

Alan Goodman
US EPA, Region 10
Oregon Operations Office
811 SW 6th Avenue
Portland, OR 97204

Re: Amendment to Endangered Species Act Section 7 Formal Consultation and Magnuson-Stevens Act Essential Fish Habitat Consultation for the Construction of a Barrier Wall at the McCormick and Baxter Creosoting Company Site, Portland, Oregon

Dear Mr. Goodman:

A biological opinion (Opinion) was completed by NOAA's National Marine Fisheries Service (NOAA Fisheries) pursuant to section 7 of the Endangered Species Act (ESA) on the effects of the construction of a subsurface barrier wall at the McCormick and Baxter Creosoting Company site (the Site) in Portland, Oregon on August 20, 2002 (refer to: 2002/00761). The Site is adjacent to the Willamette River, and has been designated a Federal Superfund Site under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The U.S. Environmental Protection Agency (EPA) is the Federal action agency, and the Oregon Department of Environmental Quality (DEQ) is responsible for implementing the remedy. The proposed action is the first of three remedial actions proposed for the Site to reduce the potential exposure to contaminants present in the sediment, groundwater, and soils at the project site. Construction began in this phase of the remedy in spring 2003. On June 19, 2003, DEQ contacted NOAA Fisheries to request an amendment to the proposed action. The ESA-listed species that have the potential to be affected by this amendment include Upper Willamette River chinook salmon (*Oncorhynchus tshawytscha*), Lower Columbia River chinook salmon, Columbia River chum salmon (*O. keta*), Upper Willamette River steelhead (*O. mykiss*), and Lower Columbia River steelhead.

Amendment to the Proposed Action

In the early 1990s during clean-up activities (as per the original remedy for the site), DEQ attempted to remove creosote from the soils on the upland portion of the site by using extraction wells. This was not successful at removing much product. As a consequence, DEQ built an interceptor trench in an attempt to increase the rate of creosote removal. The interceptor trench was constructed parallel to the Willamette River with coarse gravel. The concept was that it should be easier to extract the creosote from the coarser-grained material than the fine-grained



soil on site. This was not successful, seemingly because the pore spaces between the coarse gravel fill too quickly with silt.

In June of 2003 during the excavation for the construction of the barrier wall and possible pile removal, the contractor excavated into the interceptor trench and discovered a significant source of creosote. EPA and DEQ wish to revise the proposed action to include the excavation and removal of the interceptor trench.

The interceptor trench is located immediately outside of the newly installed sheetpile wall (toward the Willamette River) between stations 7+00 and 5+75. It is adjacent to, but outside of, the actively flowing river. A row of wooden pilings forms the riverside boundary of the interceptor trench. The interceptor trench is approximately 10 feet wide, extends 15 feet below ground surface, and parallels the river for 150 feet. The interceptor trench contains approximately 800 cubic yards of gravel which has been infiltrated with silts that are highly contaminated with creosote. EPA and DEQ do not anticipate encountering mobile non-aqueous phase liquids (NAPL) during the excavation. Excavation of the interceptor trench is expected to take two to four days. DEQ would like to initiate excavation of the interceptor trench the week of June 30, 2003.

Although the planned excavation will remove a significant source of grossly contaminated material from outside the barrier wall, substantial contamination will remain in this area which comprises the TFA (tank farm area) creosote seep. EPA and DEQ are currently developing a sediment cap design to address the TFA seep as well as the other creosote seeps along the Willamette River and Willamette Cove.

The excavated material will be placed in a disposal cell to be constructed within the barrier wall and toward the upland portion of the site. This will somewhat isolate the contaminated material from the Willamette River. As stated in the 2002 Explanation of Significant Difference, and as recommended in the 2002 Opinion as a discretionary conservation measure, DEQ and EPA will consider the use of impermeable or semi-permeable features in the upland soil cap. These features would further increase the effectiveness of the barrier wall in preventing contaminants from leaching into river. DEQ intends to begin designing the upland soil cap this fall and will work closely with EPA, NOAA Fisheries, NOAA and the other Natural Resource Trustees.

EPA, DEQ, and the construction contractor will adhere to all Terms and Conditions stated in the 2002 Opinion including the placement of containment booms and adsorbent booms in this area of the Willamette River and monitoring by a biologist. All work will occur in the dry (*i.e.*, not within the actively-flowing river). Additionally, the contractor will maintain sediment erosion controls consisting of a silt fence and biobags.

Endangered Species Act Consultation

NOAA Fisheries finds that the conclusion of the 2002 Opinion is still valid, and that the proposed amendment to the action is not likely to jeopardize the continued existence of ESA-listed Upper Willamette River chinook salmon (*Oncorhynchus tshawytscha*), Lower Columbia

River chinook salmon, Columbia River chum salmon (*O. keta*), Upper Willamette River steelhead (*O. mykiss*), and Lower Columbia River steelhead. The reasonable and prudent measures with non-discretionary terms and conditions from the 2002 Opinion are necessary and sufficient to minimize the impact of incidental take associated with this action.

Our conclusions are based on the following considerations: (1) The proposed amendment will further the project goal of reducing the release or leaching of creosote into the Willamette River; (2) no work will occur in the actively-flowing river; (3) use of the proposed conservation measures will reduce the likelihood that fish will be exposed to creosote as a result of construction activities; and (4) the combined effects of the original proposed action and this amendment will not retard the long-term progress of impaired habitat toward proper functioning condition essential to the long-term survival and recovery at the population or ESU scale.


Magnuson-Stevens Fishery Conservation and Management Act

This reinitiation and Opinion also serves as consultation on essential fish habitat pursuant to section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and implementing regulations at 50 CFR Part 600. After reviewing the current status of the listed species, the environmental baseline for the action areas, the effects of the proposed action as amended, and cumulative effects, NOAA Fisheries has determined that the actions will adversely affect the EFH for chinook and coho salmon, and starry flounder.

Pursuant to section 305(b)(4)(A) of the MSA, NOAA Fisheries is required to provide EFH conservation recommendations for any Federal or state agency action that would adversely affect EFH. The conservation measures proposed for the project by EPA and DEQ and all of the reasonable and prudent measures and the terms and conditions contained in 2002 Opinion are applicable to salmon EFH and starry flounder. Therefore, NOAA Fisheries incorporates each of those measures here as EFH conservation recommendations.

If you have any questions regarding this consultation, please contact Dr. Nancy Munn of my staff in the Oregon Habitat Branch at 503.231.6269.

Sincerely,


for D. Robert Lohn

Regional Administrator

cc. Kevin Parrett, ODEQ
Steve Campbell, ODEQ
Kathy Ivy, EPA
Helen Hillman, NOAA Office of Response and Restoration